



Categories under 2013 CFTC Interpretive Guidance

"CFTC 2013 Interpretive Guidance" means the CFTC's *Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations*, 78 Fed. Reg. 45292 (Jul. 26, 2013) <https://www.govinfo.gov/content/pkg/FR-2013-07-26/pdf/2013-17958.pdf>

U.S. Person (CFTC 2013 Interpretive Guidance) - category applicable to private individuals & legal entities

A "U.S. Person (CFTC 2013 Interpretive Guidance)" means the enumerated categories of U.S. Persons that are provided in the CFTC 2013 Interpretive Guidance¹. For information purposes only, the text of the categories (but not the related interpretive materials) is reproduced below:

- i. any natural person who is a resident of the United States;
- ii. any estate of a decedent who was a resident of the United States at the time of death;
- iii. any legal entity other than an entity described in prongs (iv) or (v) below that is organized or incorporated under the laws of a state or other jurisdiction in the United States or having its principal place of business in the United States;
- iv. any pension plan for the employees, officers or principals of a legal entity described in prong (iii), unless the pension plan is primarily for foreign employees of such entity;
- v. any trust governed by the laws of a state or other jurisdiction in the United States, if a court within the United States is able to exercise primary supervision over the administration of the trust;
- vi. any commodity pool, pooled account, investment fund or other collective investment vehicle that is not described in prong (iii) and that is majority-owned by one or more persons described in prong (i) to (v) (where "majority-owned" means beneficial ownership of more than 50% of the equity or voting interest in the vehicle), except any vehicle that is publicly offered only to non-U.S. Persons and not offered to U.S. Persons (CFTC 2013 Interpretive Guidance);
- vii. any legal entity that is directly or indirectly majority-owned by one or more persons described in prong (i) to (v) and in which such person(s) bears unlimited responsibility for the obligations and liabilities of the legal entity; and
- viii. any individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in prong (i), (ii), (iii), (iv), (v), (vi) or (vii).

¹ CFTC 2013 Interpretive Guidance at pp. 45316-17



U.S. Person Guarantee (CFTC 2013 Interpretive Guidance) - category applicable to private individuals & legal entities

The status *U.S. Person Guarantee (CFTC 2013 Interpretive Guidance)* means your obligations to us under any CFTC covered swap will be supported by a Guarantee that is provided by a person that you reasonably believe is a U.S. Person (CFTC 2013 Interpretive Guidance). The term “Guarantee” for purpose of this status acknowledgement means an agreement or arrangement under which a person commits to provide a financial backstop or funding against potential losses that may be incurred by another person in connection with a CFTC covered swap. Such a “Guarantee” may, for example, include a corporate contract, an assumption of debt or security of whatever kind (this list is not exhaustive).

Affiliate Conduit - category applicable to legal entities only

The CFTC’s Interpretive Guidance refers to four factors relevant in determining whether a non-U.S. Person is an “Affiliate Conduit”². For informational purposes only, the text of the factors (but not the related interpretive material) is reproduced below:

1a) the non-U.S. Person is a majority-owned affiliate of a U.S. Person (CFTC 2013 Interpretive Guidance);

1b) the non-U.S. Person is controlling, controlled by or under common control with the U.S. Person (CFTC 2013 Interpretive Guidance);

1c) the financial results of the non-U.S. Person are included in the consolidated financial statements of the U.S. Person (CFTC 2013 Interpretive Guidance);

and

2) the non-U.S. Person, in the regular course of business, engages in swaps with a non-U.S. third party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s), and enters into offsetting swaps or other arrangements with its U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with a third party(ies) to its U.S. affiliates.

² For the full discussion of how the CFTC interprets the term “affiliate conduit” (or alternately “conduit affiliate”), see the Interpretive Guidance at pp. 45357-59. Note that the discussion indicates that the term “affiliate conduit” is not intended to include affiliates of swap dealers.



Categories under CFTC 2020 Rules

“CFTC 2020 Final Rules” means the CFTC rule adopted in the following Federal Register citations, as amended and supplemented from time to time: *Cross-Border Application of the Registration Thresholds and Certain Requirements Applicable to Swap Dealers and Major Swap Participants*, 85 Fed. Reg. 56924 (Sept. 14, 2020) <https://www.govinfo.gov/content/pkg/FR-2020-09-14/pdf/2020-16489.pdf>

U.S. Person (CFTC 2020 Rules) - category applicable to private individuals & legal entities

A “U.S. Person (CFTC 2020 Rules)” means any person, that is:

- i. a natural person resident of the United States;
- ii. a partnership, corporation, trust, investment vehicle, or other legal person organized, incorporated, or established under the laws of the United States or having its principal place of business in the United States;
- iii. an account (whether discretionary or non-discretionary) of a U.S. person; or
- iv. an estate of a decedent who was a resident of the United States at the time of death.

For the purposes of ii., principal place of business means the location from which the officers, partners, or managers of the legal person listed in ii. Primarily direct, control, and coordinate the activities of the legal person.

U.S. Person Guarantee (CFTC 2020 Rules) - category applicable to private individuals & legal entities

The status “U.S. Person Guarantee” means that one or more of your obligations with us under any CFTC covered swap are subject to a Guarantee by a U.S. Person (CFTC 2020 Rules).

The term “Guarantee” means an arrangement pursuant to which one party to a CFTC covered swap has rights of recourse against a guarantor, with respect to its counterparty’s obligations under the CFTC covered swap. For these purposes, a party to a CFTC covered swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty’s obligations under the CFTC covered swap.

In addition, in the case of any arrangement pursuant to which the guarantor has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other guarantor with respect to the counterparty’s obligations under the CFTC covered swap, such arrangement will be deemed a guarantee of the counterparty’s obligations under the CFTC covered swap by the other guarantor.



Significant Risk Subsidiaries - category applicable to legal entities only

“Significant Risk Subsidiary” means any non-US Significant Subsidiary of an Ultimate US Parent Entity³ where the Ultimate US Parent Entity has more than US\$50 billion in global consolidated assets, as determined in accordance with generally accepted accounting principles in the United States (US GAAP) at the end of the most recently completed fiscal year.

“Significant Subsidiary” means a Subsidiary⁴, including its Subsidiary, which meets any of the following conditions:

- (i) The three-year rolling average of the Subsidiary's equity capital is equal to or greater than five percent of the three-year rolling average of the Ultimate U.S. Parent Entity's consolidated equity capital, as determined in accordance with U.S. GAAP as of the end of the most recently completed fiscal year;
- (ii) The three-year rolling average of the Subsidiary's total revenue is equal to or greater than ten percent of the three-year rolling average of the Ultimate U.S. Parent Entity's total consolidated revenue, as determined in accordance with U.S. GAAP as of the end of the most recently completed fiscal year; or
- (iii) The three-year rolling average of the Subsidiary's total assets is equal to or greater than ten percent of the three-year rolling average of the Ultimate U.S. Parent Entity's total consolidated assets, as determined in accordance with U.S. GAAP as of the end of the most recently completed fiscal year.

³ “Ultimate U.S. Parent Entity” means the U.S. Parent Entity that is not a Subsidiary of any other U.S. Parent Entity. The discussion in the preamble to the CFTC 2020 Rules indicates that a “U.S. Parent Entity” is a Parent Entity that is also a U.S. Person (CFTC 2020 Rules).

⁴ “Subsidiary” means an affiliate of a person controlled by such person directly, or indirectly through one or more intermediaries.